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TAX EXEMPTION.

An Appeal to the Boards of Supervisors.

WATCH RAILROAD LEGISLATION

The Railroad Should be Assessed at a Fair Valuation and Pay the Same Rate Upon that Valuation as Other Property Owners.

FLAGSTAFF, March 22, 1902.

To the Several Boards of Supervisors of the Counties of Apache, Navajo, Coconino, Yavapai and Mohave:

The Atlantic & Pacific Railroad Company was by its charter, granted exemption from taxation in the territories upon its right of way; and some years since assumed the position that its exemption extended, not alone to the land upon which its road was constructed, but to the superstructure as well, and upon this theory resisted payment of its taxes. The territorial courts refused to adopt this construction of the charter, but able counsel differed upon the question, and in view of the doubt as to its ultimate determination, an appeal to the United States Supreme Court was prevented by a compromise, under the terms of which the Territorial Board of Equalization assessed the road at \$5,000 per mile. The railroad company agreed to pay its taxes upon that valuation, and did so until succeeded by the Santa Fe Pacific Railroad Company in the spring of 1897. Its example was followed by the latter company for the taxes of that year. Subsequently, however, in a case appealed from New Mexico, the United States Supreme Court held that the charter of the original road exempted it from taxation upon its entire line within the territories, including the superstructure. Since this decision the S. F. & P. R. Co. has claimed that by virtue of the Act of Congress of March 3, 1897, it succeeded to the same immunity from taxation upon its road. But exemption from taxation is a personal privilege which can only be transferred by the person or corporation enjoying it upon the express permission of the legislative body which originally conferred it, and such permission must be expressed in the clearest and most unmistakable terms, every presumption being against the existence of a legislative intent to confer such unusual privilege. These are well settled and elementary rules of statutory construction.

The exemption was originally given to the A. & P. R. R. Co. in consideration of the benefits that would accrue to the public through the construction of the road and as an inducement to the company to undertake its construction. When the original company became insolvent and its property was ordered sold under a decree of foreclosure no valid reason could exist for conferring the exemption upon the purchasers. They were strangers to the original contract; the road was constructed by the old company, and must be operated by the new one for its own benefit, en-

tirely irrespective of any public benefit arising therefrom. If Congress had granted the exemption to the purchasers in explicit terms the act would have been without any consideration whatever moving from the beneficiaries to either the government or the public. It would have been obviously injurious to the territories affected and borne the stamp of corruption upon its face.

In passing the Act of March 3 every presumption of fact is against the existence of an intent upon the part of Congress to give the privilege of tax exemption to the S. F. & P. R. Co., under the circumstances then existing, and every intendment of law is against that construction of the existing Act contended for by the company. The only portion of the Act which by any refinement of reasoning can be construed as evincing an intent to confer immunity from taxation is that which confers upon the new company "all the rights, powers, privileges, grants and franchises" of the Atlantic & Pacific Railroad Co. The absence from the Act of the word exemption or exemptions, immunity or immunities, is significant in view of the fact that long prior to the passage of the Act the United States Supreme Court had held the word immunity to be an apt word to describe a tax exemption. *R. R. Co. vs. Palmer*, 109 U. S. 185.

In *C. & O. R. R. Co. vs. Miller*, 114 U. S. 185, the court in construing an Act very similar to the one in question, by the terms of which one railroad company was authorized to acquire all the "franchises, rights and privileges" which had been possessed by another, holds those words insufficient to convey an exemption from taxation; holds them to cover only those rights and privileges which are necessary to the maintenance and operation of the road. It discusses the considerations which induce legislative bodies to grant immunity from taxation to railroad companies before construction, shows that they no longer exist in the case of a purchaser of the road from the old company and says: "As no consideration moved to the State for a renewal of the grant, there is no motive for finding, by mere construction and implication, what the words of the law have failed to express."

In *Pickard vs. R. R. Co.*, 130 U. S. 641, the Court says: "It is true there are some cases where the term 'privileges' has been held to include immunity from taxation, but that has generally been where other provisions of the Act have given such meaning to it. The later, and, we think, the better opinion, is that, unless other provisions remove all doubt of the intention of the legislature to include the immunity in the term 'privileges' it will not be so construed. It can have its full force by confining it to other grants to the corporation."

In *Insurance Co. vs. Tennessee*, 161 U. S. 181, the Court reviews the earlier decisions upon which the railroad company can alone rely, and asserts their inapplicability to the interpretation of the words under consideration, and in conclusion upon this point says: "If this were an original question, we should have no hesitation in holding that the plaintiff in error did not acquire the exemption from taxation claimed by it, and we think at the present time the weight of authority, as well as the better opinion, is in favor

of the same conclusion which we should otherwise reach."

On November 15th last the U. S. Supreme Court, in *R. R. Co. vs. Hewes*, gave its latest expression upon this point in the following language: "In addition to all this, however, the better opinion is that a subrogation to the 'rights and privileges' of a former corporation does not include an immunity from taxation."

By numerous decisions, only a portion of which are here cited, the U. S. Supreme Court is thoroughly and unmistakably committed to the view that, under existing laws, the S. F. & P. R. Co. has not succeeded to that immunity from taxation enjoyed by the A. & P. R. Co., but that its property is subject, equally with any other property to taxation. That this is fully recognized by the railroad company is clearly evinced by its acts. In February, 1900, Mr. Curtis, who is a member of Congress from Topeka, Kansas, and who is generally supposed to be very friendly to the railroad company, introduced a bill providing for selling or leasing the road to the A. T. & S. F. Co., and providing that thereafter "such purchaser or lessee shall have and enjoy all rights, immunities and franchises relating to said railroad and property, or any part thereof, that were conferred by Congress upon said Atlantic & Pacific Railroad Company, or upon said Santa Fe Pacific Railroad Company."

This bill was so worded as to unquestionably carry the immunity from taxation desired by the railroad company had it been able to secure its passage, but it failed to become a law.

During the past winter bills were introduced, by Mr. Mason in the Senate and by Mr. Curtis in the House, similarly authorizing the selling or leasing of the road, and which conferred no exemption from taxation, and was entirely unobjectionable, with the exception of one word. It provided that the purchaser should have such "rights, powers, privileges, immunities and franchises" as were conferred by Congress upon the S. F. & P. R. Co. No immunities have ever been conferred upon that company, but it is unsafe to treat the introduction of that word as meaningless. It may be introduced for the purpose of ultimately supporting the contention that its use in the present bill constitutes a congressional interpretation of the Act of March 3d, as including exemption from taxation, and as such should be entitled to consideration by the courts in construing the last-mentioned Act.

Recently the boards of supervisors of Coconino and Mohave counties have adopted and circulated among members of Congress resolutions protesting against the passage of any bill tending to exempt the railroad company from the payment of its just and equitable proportion of the burden of taxation. No further action, I understand, has been taken, owing to the apparent lack of interest of the representative taxpayers in the counties affected, due doubtless to a lack of knowledge of the situation.

Conflicting information has been received by the Board of Supervisors of Coconino county from Washington as to the situation of the House bill, and, as I understand, no information whatever as to the status of the Senate bill. For the taxes of 1901 the railroad

company paid in Coconino county, upon its road and equipment, \$9,199.93, being on a tax levy of \$3.36 on the hundred dollars and an assessment of \$2,500 per mile. As a result of the action of the boards of supervisors named information is received from Hon. M. A. Smith, our Delegate to Congress, that the company has offered to pay in future upon its road, first, \$150 per mile, and subsequently at the rate of \$175 per mile. The latter offer would amount in Coconino county to over eighteen thousand dollars per annum, and would be very liberal upon the company's part were it exempt by law from the operation of the general revenue laws of the territory and at liberty to dictate what valuation should be placed upon its property for purposes of taxation and the rate to be levied thereon. But I understand the offer is accompanied by the proposition that this amount shall be fixed in the Act of Congress so as to afford the company protection against the payment of any greater amount under the operation of the general revenue laws of the territory.

A court of high standing has recently held that the only proper method of assessing a railroad is to add the market value of its bonds and stocks. That would certainly be a fair method of arriving at the value of the road in question. Its bonds and stocks are listed in the great stock exchanges of the world, and the total market value per mile can be easily determined, and at present prices probably amount to somewhere between fifty thousand and one hundred thousand dollars per mile, although I have not the data at hand. Certainly a valuation of twenty-five thousand dollars per mile would be proportionately far less than the valuations placed by the assessors upon other property in the territory, and I see no good reason for the counties affected consenting to action which would deprive them of a major portion of the revenues they should derive from the road in question.

Enforcement of existing laws is alone necessary to compel the company to pay its just proportion. I therefore suggest that you take the following steps:

First—Take suitable measures to be at all times advised of the character and status of any and all legislation pending before Congress affecting the liability of the railroad in question to taxation.

Second—Oppose any bill containing the words "immunity," "immunities," "exemption" or "exemptions," or which contain any phraseology tending to exempt the road from taxation or which provide for the payment by the road of any fixed amount which is less than its just proportion; and, lastly, see that the Territorial Board of Equalization assesses the road at a fair valuation, leaving it to pay the same rate upon that valuation that is paid by other property owners upon their property.

EDWARD M. DOE.

A Holbrook mercantile firm has employed 140 Navajo squaws, who are kept busy weaving blankets against the anticipated demand at the world's fair in 1903.

Pensions have been granted to the following Arizonans: Mrs. Kennedy, Bisbee, \$10; Elijah S. Janior, Prescott, \$6; Stephen Schley, Scottsdale, \$30.

THE SUN office for neat job printing.